IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 770 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMISTHA J SONI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 770 of 2001

MR HARIN P RAVAL for Petitioner No. 1

MS MANISHA SHAH, AGP for Respondent No. 1-2

DS AFF.NOT FILED (R) for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/09/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioner before this Court is an elected member of Dabhoi Nagar Palika. Feeling aggrieved by the order dated 17th January, 2001 made by the Director of Municipalities, the respondent no.2, the petitioner has preferred the present petition under Art.226 of the Constitution of India and has challenged the same.

#. Mr.Raval has submitted that under the impugned order the petitioner is sought to be removed from her office as a councillor of the Dabhoi Municipality for the alleged acts of disgraceful conduct. Mr.Raval has further submitted that the order is vitiated by malafide and political considerations, as it is evident from the fact that though the impugned order was made on 17th December, 2000, it was not despatched till 17th January, 2001. He has submitted that the petitioner was not informed of the order immediately so as to prevent her from challenging the same and was despatched on 17th January, 2001 so as to restrain her from voting or participating in the meeting of the Municipality on 21st January, 2001. He has next contended that the petitioner was not the councillor entrusted with the duties of appointment or discharge of daily wagers in the Municipality. The petitioner, therefore, could not have committed the acts or disgraceful conduct which are alleged against her. He has next contended that in any view of the matter, neither the petitioner can be said to have committed misconduct nor can be said to be guilty of disgraceful conduct. Section-37 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'the Act') has wrongly been invoked. The impugned order made in purported exercise of power conferred under section-37 of the Act is, therefore, null and void and requires to be quashed and set aside. He has buttressed this contention by submitting that no criminal complaint has been filed against the petitioner for the alleged act of disgraceful conduct/misconduct. Moreover, the respondent-Authority has relied upon the materials collected without the knowledge of the petitioner and has made the impugned order without affording an opportunity of hearing to the petitioner. He has submitted that the petitioner, a duly elected member of the Municipality, is sought to be removed from her office in an undemocratic manner.

#. On 31st August 2000, the Director of Municipalities issued a notice calling upon the petitioner to show cause as to why she should not be removed from her office in exercise of the powers conferred under section 37 (1) of the Act. The petitioner was informed about several acts

which she had committed not befitting to a duly elected councillor. The said show cause notice was duly answered by the petitioner. The petitioner was given an opportunity of hearing on 18th November, 2000 and 4th December, 2000. Before the date of hearing, on 12th October, 2000 the petitioner was given copies of all the documents that she had asked for. On 4th December, 2000, the petitioner submitted her written reply and also made a statement that, in addition to what she had stated in her reply, she had not to say anything. Thus, in my view, the inquiry can not be said to have been made in violation of principles of natural justice. It is well settled law that, 'no delinquent is required to be heard or informed about the preliminary inquiry which may be held against him or her.' The principles of natural justice require that all the materials collected in the course of preliminary inquiry shall be furnished to the delinquent concerned. In the present case, the petitioner has been supplied with all the documents on 12th October, 2000 and she had been given an opportunity of submitting her written reply, as well as, of oral hearing. Hence, in my view, the contention that the inquiry has been conducted in violation of the principles of natural justice is required to be rejected. So far as the alleged act of disgraceful conduct is concerned, the allegation appears to be that the petitioner had made undue interference in the administration of the Municipality in the matter of appointment of daily wagers. She had demanded illegal gratification from such daily wagers, and on refusal to do so, such daily wagers were discharged from service at her instance. In my view, the acts alleged to have been committed by the petitioner can not be said to be short of disgraceful conduct. The respondent no.2 has rightly invoked the power of removal of a councillor, conferred under section 37 (1) of the Act. Whether the petitioner has committed such alleged acts or not is a matter of finding of fact and subjective satisfaction of the concerned Authority. This Court, exercising its power of judicial review under Art. 226 of the Constitution of India, would neither interfere with the finding of fact recorded by the concerned Authority after following the due procedure, nor would it substitute the subjective satisfaction recorded by such Authority. In my view, the authority below has arrived at a subjective satisfaction after following the due procedure. The subjective satisfaction recorded by the authority below, therefore, does not warrant interference, nor the impugned order requires to be interfered with.

#. In above view of the matter, the petition is

dismissed. Rule is discharged. Interim relied is vacated. The parties shall bear their own costs.

#. Learned Advocate Mr. H.P Raval requests that the interim order be continued for a period of ten days. Request is granted. The interim order operating during the pendency of the petition shall continue till 1st October, 2001.

17th September, 2001. (Ms. R.M.Doshit, J.)

/sakkaf